

ENVIRONMENTAL QUALITY

CHAPTER 30

WATER QUALITY

Sub-Chapter 14

Pretreatment

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Sub-Chapter 14

Pretreatment

17.30.1401 APPLICABILITY (1) This subchapter applies to the following:

(a) pollutants from non-domestic sources covered by pretreatment standards which are indirectly discharged, transported by truck or rail, or otherwise introduced into POTW's;

(b) POTW's which receive wastewater from sources subject to national pretreatment standards; and

(c) any new or existing source subject to national pretreatment standards.

(2) National pretreatment standards do not apply to sources which discharge to a sewer which is not connected to a POTW. (History: 75-5-304, MCA; IMP, 75-5-304, MCA; NEW, 1989 MAR p. 2063, Eff. 12/8/89; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.1402 DEFINITIONS The definitions contained in ARM Title 17, chapter 30, subchapter 13 are hereby incorporated by reference in this subchapter. The following definitions pertain to indirect dischargers and POTW's subject to pretreatment standards and the MPDES program:

(1) "Approved POTW pretreatment program" means a program administered by a POTW that meets the criteria established in (8) of this rule and which has been approved by the department in accordance with ARM 17.30.1413.

(2) "Indirect discharge" or "discharge" means the introduction of pollutants into a POTW from any non-domestic source regulated by the MPDES program.

(3) "Industrial user" or "user" means a source of indirect discharge.

(4) "Interference" means a discharge which, alone or in conjunction with a discharge or discharges from other sources, both:

(a) inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and

(b) therefore is a cause of a violation of any requirement of the POTW's MPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent state or local regulations): section 405 of the Clean Water Act (CWA), the Solid Waste Disposal Act (SWDA) (including Title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA), and including state regulations contained in any state sludge management plan prepared pursuant to Subtitle D of the SWDA),

the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection, Research and Sanctuaries Act.

(5) "National pretreatment standard" or "pretreatment standard" means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with section 307(b) and (c) of the CWA, which applies to industrial users. This includes prohibitive discharge limits established pursuant to ARM 17.30.1406(4).

(6) "Pass through" means a discharge which exits the POTW into state waters in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's MPDES permit (including an increase in the magnitude or duration of a violation).

(7) "POTW treatment plant" means that portion of the POTW which is designed to provide treatment, including recycling and reclamation of municipal sewage and industrial waste.

(8) "Pretreatment" means the reduction of the amount of pollutants, the elimination of pollutants or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical, or biological processes, process changes, or by other means, except as prohibited by 40 CFR 403.6(d). Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loading that might interfere with or otherwise be incompatible with the POTW. However, where wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with 40 CFR 403.6(e).

(9) "Pretreatment requirements" means any substantive or procedural requirements related to pretreatment, other than the national pretreatment standard, imposed on an industrial user.

(10) "Regional administrator" means the administrator of Region VIII of the EPA, which has jurisdiction over federal water pollution control activities in the state of Montana.

(11)(a) "Significant industrial user", except as provided in this section, means:

(i) all industrial users subject to categorical pretreatment standards under 40 CFR 403.6 and 40 CFR chapter I, subchapter N; and

(ii) any other industrial user that discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary noncontact cooling and boiler blowdown wastewater); contributes a process wastestream which makes up 5% or more of the average dry weather hydraulic or organic capacity

of the POTW treatment plant; or is designated as such by the control authority as defined in ARM 17.30.1410(1) on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement (in accordance with ARM 17.30.1411(7)).

(b) Upon finding that an industrial user meeting the criteria in (a) above has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the control authority (as defined in ARM 17.30.1414(1)) may on its own initiative or in response to a petition received from an industrial user or POTW, and in accordance with ARM 17.30.1411(7), determine that the industrial user is not a significant industrial user.

(c) The board hereby adopts and incorporates by reference 40 CFR 403.5 (national pretreatment standards: categorical standards) (July 1, 1991), and 40 CFR chapter I, subchapter N (effluent guidelines and standards) (July 1, 1991). Copies of these materials are available from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.

(12) "Submission" means either a request by a POTW for approval of a pretreatment program to the department, or a request by a POTW for authority to revise the discharge limits in categorical pretreatment standards to reflect POTW pollutant removals. (History: 75-5-201, 75-5-304, MCA; IMP, 75-5-304, MCA; NEW, 1989 MAR p. 2063, Eff. 12/8/89; AMD, 1992 MAR p. 1241, Eff. 6/12/92; TRANS, from DHES, 1996 MAR p. 1499.)

Rules 17.30.1403 and 17.30.1404 reserved

17.30.1405 LOCAL LAW (1) Nothing in this subchapter is intended to affect any pretreatment requirements, including any standards or prohibitions, established by local law as long as the local requirements are not less stringent than any set forth in state or national pretreatment standards, or any other requirements or prohibitions established by the department or by the EPA. (History: 75-5-304, MCA; IMP, 75-5-304, MCA; NEW, 1989 MAR p. 2063, Eff. 12/8/89; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.1406 NATIONAL PRETREATMENT STANDARDS: PROHIBITED DISCHARGES (1) A user may not introduce into a POTW any pollutants which cause pass through or interference. These general prohibitions and the specific prohibitions in (2) of this rule apply to all non-domestic sources introducing pollutants into a POTW whether or not the source is subject to other national pretreatment standards or any national, state, or local pretreatment requirements.

(2) In addition, the following pollutants may not be introduced into a POTW:

(a) pollutants which create a fire or explosion hazard in the POTW, including wastestreams with a closed cup flashpoint of less than 140°F or 60°C using the test methods specified in 40 CFR 261.21;

(b) pollutants which will cause corrosive structural damage to the POTW, but in no case discharges with pH lower than 5.0, unless the works is specifically designed to accommodate such discharges;

(c) solid or viscous pollutants in amounts which will cause obstruction to the flow in the POTW resulting in interference;

(d) any pollutant, including oxygen-demanding pollutants (BOD, etc.), released in a discharge at a flow rate and/or pollutant concentration which will cause interference with the POTW;

(e) heat in amounts which will inhibit biological activity in the POTW resulting in interference, but in no case heat in such quantities that the temperature at the POTW treatment plant exceeds 40°C (104°F) unless the department, upon request of the POTW, approves alternative temperature limits;

(f) petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through;

(g) pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems; and

(h) any trucked or hauled pollutants, except at discharge points designated by the POTW.

(3) A user has an affirmative defense in any action

brought against it alleging a violation of the general prohibitions established in (1)(a) of this rule and the specific prohibitions in (2)(c)-(g) of this rule if the user demonstrates that:

(a) it did not know or have reason to know that its discharge, alone or in conjunction with a discharge or discharges from other sources, would cause pass through or interference; and

(b)(i) a local limit designed to prevent pass through or interference or both of them was developed in accordance with (4) of this rule for each pollutant in the user's discharge that caused pass through or interference, and the user was in compliance with each local limit directly prior to and during the pass through or interference; or

(ii) if a local limit designed to prevent pass through or interference or both of them has not been developed in accordance with (4) of this rule for the pollutant or pollutants that caused the pass through or interference, the user's discharge directly prior to and during the pass through or interference did not change substantially in nature or constituents from the user's prior discharge activity when the POTW was regularly in compliance with the POTW's MPDES permit requirements and, in the case of interference, applicable requirements for sewage sludge use or disposal.

(4)(a) POTW's developing POTW pretreatment programs must develop and enforce specific limits to implement the prohibitions listed in (1) and (2) of this rule. Each POTW with an approved pretreatment program shall continue to develop these limits as necessary and effectively enforce these limits.

(b) All other POTW's shall, in cases where pollutants contributed by user(s) result in interference or pass through, and such violation is likely to recur, develop and enforce specific effluent limits for industrial user(s), and all other users, as appropriate, which together with appropriate changes in the POTW treatment plant's facilities or operation, are necessary to ensure renewed and continued compliance with the POTW's MPDES permit or sludge use or disposal practices;

(c) Specific effluent limits may not be developed and enforced without individual notice to persons or groups who have requested such notice and an opportunity to respond.

(5) Where specific prohibitions or limits on pollutants or pollutant parameters are developed by a POTW in accordance with (3) of this rule, such limits are deemed pretreatment standards for purposes of 75-5-304, MCA, of the Montana Water Quality Act.

(6) If, within 30 days after notice of an interference or pass through violation has been sent by the department to the POTW, and to persons or groups who have requested such notice, the POTW fails to commence appropriate enforcement action to correct the violation, the department may take appropriate

enforcement action.

(7) The board hereby adopts and incorporates by reference 40 CFR 261.21 (characteristics of ignitability) (July 1, 1991). Copies of these materials are available from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901. (History: 75-5-201, 75-5-304, MCA; IMP, 75-5-304, MCA; NEW, 1989 MAR p. 2063, Eff. 12/8/89; AMD, 1992 MAR p. 1241, Eff. 6/12/92; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.1407 NATIONAL PRETREATMENT STANDARDS: CATEGORICAL STANDARDS (1) Pretreatment standards specifying quantities or concentrations of pollutants or pollutant properties that may be discharged to a POTW by existing or new industrial users in specific industrial subcategories may be established as separate regulations under ARM Title 17, chapter 30. These standards, unless specifically noted otherwise, are in addition to all applicable pretreatment standards and requirements set forth in this subchapter.

(2) In addition to the general prohibitions in ARM 17.30.1406(1), all indirect dischargers must comply with national pretreatment standards promulgated by the EPA and codified in 40 CFR Chapter 1, subchapter N. Compliance is required within the time specified in the appropriate subpart of subchapter N.

(3) Industrial users may request the department to provide written certification on whether an industrial user falls within a particular subcategory. The department will act upon that request in accordance with the procedures in 40 CFR 403.6.

(4) Limitations for industrial users will be imposed in accordance with 40 CFR 403.6(c)-(e).

(5) The board hereby incorporates by reference herein 40 CFR Chapter I, Subchapter N (Effluent Guidelines and Standards) (July 1, 1991), 40 CFR 403.6 (National Pretreatment Standards: Categorical Standards) (July 1, 1991); and 40 CFR Part 136 (Guidelines Establishing Test Procedures for Analysis of Pollutants) (July 1, 1991). Copies of these materials are available from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901. (History: 75-5-201, 75-5-304, MCA; IMP, 75-5-304, MCA; NEW, 1989 MAR p. 2063, Eff. 12/8/89; AMD, 1992 MAR p. 1241, Eff. 6/12/92; TRANS, from DHES, 1996 MAR p. 1499.)

Rules 17.30.1408 and 17.30.1409 reserved

17.30.1410 REMOVAL CREDITS (1) POTW's may revise pollutant discharge limits specified in categorical pretreatment standards to reflect removal of pollutants by the POTW. Revisions must be made in accordance with the provisions of 40 CFR 403.7. The department hereby incorporates by reference herein 40 CFR 403.7, which concerns removal credits. A copy of 40 CFR 403.7 may be obtained from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901. (History: 75-5-304, MCA; IMP, 75-5-304, MCA; NEW, 1989 MAR p. 2063, Eff. 12/8/89; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.1411 PRETREATMENT PROGRAMS: DEVELOPMENT BY POTW

(1) Any POTW or combination of POTW's operated by the same authority with a total design flow greater than 5 million gallons per day (mgd) and receiving from industrial users pollutants which pass through or interfere with the operation of the POTW or are otherwise subject to pretreatment standards, is required to establish a POTW pretreatment program. The department may require that a POTW with a design flow of 5 mgd or less develop a POTW pretreatment program if it is found that the nature or volume of the industrial influent, treatment process upsets, violations of POTW effluent limitations, contamination of municipal sludge, or other circumstances so warrant in order to prevent interference or pass through.

(2) A POTW which meets the criteria of this rule shall receive approval of a POTW pretreatment program no later than 3 years after the reissuance or modification of its MPDES permit. POTWs identified after July 1, 1983, as being required to develop a POTW pretreatment program under (1) of this rule shall develop and submit such a program for approval as soon as possible, but in no case later than one year after written notification from the department of such identification. The POTW pretreatment program shall meet the criteria set forth in (6) of this rule and shall be administered by the POTW to ensure compliance by industrial users with applicable pretreatment standards and requirements.

(3) A POTW may develop an appropriate POTW pretreatment program any time before the time limit set forth in (2) of this rule. The POTW's MPDES permit will be reissued or modified in accordance with ARM 17.30.1362 to incorporate the approved program conditions as enforceable conditions of the permit.

(4) If the POTW does not have an approved pretreatment program at the time the POTW's existing permit is reissued or modified, the reissued or modified permit must contain the shortest reasonable compliance schedule, not to exceed 3 years, for the approval of the legal authority, procedures, and funding required by (6) of this rule.

(5) The department may modify or revoke and reissue a POTW's permit in order to:

(a) put the POTW on a compliance schedule for the development of a POTW pretreatment program where the addition of pollutants into a POTW by an industrial user or combination of industrial users presents a substantial hazard to the functioning of the treatment works, quality of the receiving waters, human health, or the environment;

(b) coordinate the issuance of a CWA section 201 construction grant or loan issued under subchapter 3 of this chapter with the incorporation into a permit of a compliance schedule for POTW pretreatment program;

(c) incorporate an approved POTW pretreatment program in the POTW permit;

(d) incorporate a compliance schedule for the development of a POTW pretreatment program in the POTW permit;

(e) incorporate a modification of the permit approved under 75-5-402 and 75-5-403, MCA; or

(f) incorporate the removal credits established under ARM 17.30.1410.

(6) A POTW pretreatment program must meet the following legal requirements and include the following procedures. These procedures must at all times be fully and effectively exercised and implemented:

(a) The POTW shall operate pursuant to legal authority enforceable in federal, state, or local courts which authorizes or enables the POTW to apply and to enforce the requirements of this rule, other rules adopted pursuant to 75-5-304, MCA, and 33 USC sections 1317 and 1342(b)(8). The authority may be contained in a statute, ordinance, or series of contracts or joint powers agreements which the POTW is authorized to enact, enter into or implement, and which are authorized by state law. At a minimum, this legal authority must enable the POTW to:

(i) deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the POTW by industrial users where such contributions do not meet applicable pretreatment standards and requirements or where such contributions would cause the POTW to violate its MPDES permit;

(ii) require compliance with applicable pretreatment standards and requirements by industrial users;

(iii) control, through permit, order, or similar means, the contribution to the POTW by each industrial user to ensure compliance with applicable pretreatment standards and requirements. For industrial users identified under (b) below, this control must be achieved through permits or equivalent control mechanisms issued to each industrial user. The control mechanisms must be enforceable and at minimum contain the following conditions:

- (A) a statement of duration (in no case more than 5 years);
- (B) a statement of non-transferability without, at minimum, prior notification to the POTW and provision of a copy of the existing control mechanism to the new owner or operator;
- (C) effluent limits based on applicable general pretreatment standards of this subchapter, categorical pretreatment standards, local limits, and state and local law;
- (D) self-monitoring, sampling, reporting, notification and recordkeeping requirements, including an identification of the pollutants to be monitored, sampling location, sampling frequency, and sample type, based on the applicable general pretreatment standards stated in this subchapter, categorical pretreatment standards, local limits, and state and local law;
- (E) a statement of applicable civil and criminal penalties that may be assessed for violation of pretreatment standards and requirements, and any applicable compliance schedule. A compliance schedule may not extend the compliance date beyond applicable federal deadlines;
- (iv) require the development of a compliance schedule by each industrial user for the installation of technology required to meet applicable pretreatment standards and requirements;
- (v) require the submission of all notices and self-monitoring reports from industrial users as are necessary to assess and assure compliance by industrial users with pretreatment standards and requirements, including the reports required in ARM 17.30.1414;
- (vi) carry out all inspection, surveillance, and monitoring procedures necessary to determine, independent of information supplied by industrial users, compliance or noncompliance with applicable pretreatment standards and requirements by industrial users. Representatives of the POTW shall be authorized to enter any premises of any industrial user in which a discharge source or treatment system is located or in which records are required to be kept under ARM 17.30.1414 to assure compliance with pretreatment standards. Such authority must be at least as extensive as the authority provided under 33 USC section 1318;
- (vii) obtain remedies for noncompliance by industrial users with any pretreatment standard and requirement. A POTW shall be able to seek injunctive relief for noncompliance by industrial users with pretreatment standards and requirements. A POTW shall seek and assess civil and criminal penalties under authority which provides for a penalty of at least \$1,000 per violation, and shall consider each day in which an industrial user violates a pretreatment standard or regulation to be a separate violation;

(viii) pretreatment requirements enforced through the remedies set forth in (vii) above include, but are not limited to, the duty to allow or carry out inspection entry or monitoring activities; any rules, regulations or orders issued by the POTW; or any reporting requirements imposed by the POTW or this subchapter. The POTW shall have authority and procedures to immediately and effectively halt or prevent any discharge of pollutants to the POTW which reasonably appears to present an imminent danger to the health or welfare of persons. The POTW shall also have authority and procedures (which shall include notice to the affected industrial users and an opportunity to respond) to halt or prevent any discharge to the POTW which presents or may present danger to environment or which threatens to interfere with the operation of the POTW. The department may seek judicial relief for noncompliance by industrial users when the POTW has acted to seek such relief but has sought a remedy or penalty which the department finds to be insufficient. The procedures for notice to dischargers where the POTW is seeking ex parte temporary judicial injunctive relief are governed by applicable state or federal law and not by this provision, and must comply with the confidentiality requirements set forth in ARM 17.30.1419.

(b) The POTW shall develop and implement procedures to ensure compliance with the requirements of a pretreatment program. At a minimum, these procedures must enable the POTW to:

(i) identify and locate all possible industrial users which might be subject to the POTW pretreatment program. Any compilation, index, or inventory of industrial users made under this rule must be made available to the department upon request;

(ii) identify the character and volume of pollutants contributed to the POTW by the industrial user or users identified under (i) above. This information must be made available to the department upon request;

(iii) notify industrial users identified under (1) of this rule of applicable pretreatment standards and any other applicable requirements under sections 204(b) and 405 of the CWA and subtitles C and D of the Resource Conservation and Recovery Act (RCRA);

(iv) within 30 days of approval of a list of significant industrial users pursuant to (i) above, notify each industrial user of its status as an industrial user and of all requirements applicable to it as a result of its industrial user status;

(v) receive and analyze self-monitoring reports in accordance with the requirements of ARM 17.30.1414;

(vi) randomly sample and analyze the effluent from industrial users and conduct surveillance activities in order to identify, independent of information supplied by industrial users, occasional and continuing noncompliance with pretreatment standards; inspect and sample the effluent from each significant industrial user at least once a year; and evaluate, at least once every 2 years, whether each significant industrial user needs a plan to control slug discharges. For purposes of this subsection, a slug discharge is a discharge of a non-routine, episodic nature, including an accidental spill or a non-customary batch discharge. The results of these activities must be made available to the department upon request. If the POTW decides that a slug control plan is needed, the plan must contain, at a minimum, the following elements:

(A) description of discharge practices, included non-routine batch discharges;

(B) description of stored chemicals;

(C) procedures for immediately notifying the POTW of slug discharges, including any discharge that would violate a prohibition under ARM 17.30.1406(2), with procedures for followup written notification within 5 days; and

(D) if necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), or measures and equipment for emergency response;

(vii) investigate instances of noncompliance with pretreatment standards and requirements, as indicated in the reports and notices required by ARM 17.30.1414, or indicated by analysis, inspection, and surveillance activities. Sample-taking and analysis and the collection of other information must be performed with sufficient care to produce evidence admissible in enforcement proceedings or in judicial actions;

(viii) comply with all applicable public participation requirements of 40 CFR 25 in the enforcement of state pretreatment standards. These procedures must insure that at least annually the public is notified in the largest daily newspaper published in the municipality in which the POTW is located of industrial users which, during the previous 12 months, were significantly violating applicable pretreatment standards or other pretreatment requirements. For the purposes of this provision, an industrial user is in significant noncompliance if it:

(A) has chronic violations of wastewater discharge limits, defined here as those in which 66% or more of all of the measurements taken during a 6-month period exceed (by any magnitude) the daily maximum limit or the average limit for the same pollutant parameter;

(B) experiences technical review criteria (TRC) violations, defined here as those in which 33% or more of all of the measurements for each pollutant parameter taken during a 6-month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC (TRC=1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH);

(C) otherwise violates a pretreatment effluent limit (daily maximum or longer term average) that the control authority determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public);

(D) discharges a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority under (vii) above to halt or prevent such a discharge;

(E) fails to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;

(F) fails to provide, within 30 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;

(G) fails to accurately report noncompliance; or

(H) otherwise causes violations, or a group of violations that the control authority determines will adversely affect the operation or implementation of the local pretreatment program.

(c) The POTW shall have sufficient resources and qualified personnel to carry out all required authorities and procedures. In some limited circumstances, funding and personnel may be delayed by the department when the POTW has adequate legal authority and procedures to carry out the pretreatment program requirements and a limited aspect of the program does not need to be implemented immediately.

(d) POTWs shall develop local limits as required in ARM 17.30.1406(3)(a), or demonstrate that they are not necessary.

(e) The POTW shall develop and implement an enforcement response plan. This plan must contain detailed procedures indicating how a POTW will investigate and respond to instances of industrial user noncompliance. The plan must, at a minimum:

(i) describe how the POTW will investigate instances of noncompliance;

(ii) describe the types of escalating enforcement responses the POTW will take in response to all anticipated types of industrial user violations and the time periods within which responses will take place;

(iii) identify by title the official or officials responsible for each type of response;

(iv) adequately reflect the POTW's primary responsibility to enforce all applicable pretreatment requirements and standards, as detailed in (a) and (b) above.

(7) The POTW shall prepare a list of its industrial users meeting the criteria in ARM 17.30.1402(11)(b). The list shall identify the criteria in ARM 17.30.1402(11)(b) applicable to each industrial user and, for industrial users meeting the criteria in ARM 17.30.1402(11)(b)(i), shall also indicate whether the POTW has made a determination pursuant to ARM 17.30.1402(11)(b)(i). Discretionary designations or redesignations by the department are deemed to be approved by the department 90 days after submission of the list or modifications to the list, unless the department determines that a modification is in fact a substantial modification.

(8) The board hereby adopts and incorporates by reference 33 USC section 1317 (toxic and pretreatment effluent standards); 33 USC section 1318 (inspections, monitoring and entry); 33 USC 1342(b)(8) (notice of variation of pollutants into POTWs); and 40 CFR part 25 (public participation in programs) (July 1, 1991). Copies of these materials are available from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901. (History: 75-5-201, 75-5-304, MCA; IMP, 75-5-304, MCA; NEW, 1989 MAR p. 2063, Eff. 12/8/89; AMD, 1992 MAR p. 1241, Eff. 6/12/92; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.1412 POTW PRETREATMENT PROGRAMS AND AUTHORIZATION TO REVISE PRETREATMENT STANDARDS: SUBMISSION FOR APPROVAL

(1) A POTW requesting approval of a POTW pretreatment program shall develop a program description which includes the information set forth in (2) of this rule. This description must be submitted to the department who will make a determination on the request for program approval in accordance with the procedure described in ARM 17.30.1413.

(2)(a) The program submission must contain a statement from the city attorney or a city official acting in comparable capacity, or the attorney for those POTW's which have independent legal counsel, that the POTW has authority adequate to carry out the programs described in ARM 17.30.1411. This statement must:

(i) identify the legal authority under ARM 17.30.1411(6)(a) which provides the basis for each procedure under ARM 17.30.1411(6)(b);

(ii) identify the manner in which the POTW will implement the program requirements set forth in ARM 17.30.1411, including the means by which pretreatment standards will be applied to individual industrial users; and

(iii) identify how the POTW intends to ensure compliance with pretreatment standards and requirements, and to enforce them in the event of noncompliance by industrial users.

(b) The program submission must contain a copy of any statutes, ordinances, regulations, agreements, or other authorities relied upon by the POTW for its administration of the program. This submission must include a statement reflecting the endorsement or approval of the local boards or bodies responsible for supervising and/or funding the POTW pretreatment program if approved.

(c) The program submission must contain a brief description, including organization charges, of the POTW organization which will administer the pretreatment program. If more than 1 agency is responsible for administration of the program, the responsible agencies should be identified, their respective responsibilities delineated, and their procedures for coordination set forth.

(d) The program description must contain a description of the funding levels and full and part-time manpower available to implement the program.

(3) The POTW may request conditional approval of the pretreatment program pending the acquisition of funding and personnel for certain elements of the program. The request for conditional approval must meet the requirements of (2) of this rule except that the requirements of this rule may be relaxed if the submission demonstrates that:

(a) a limited aspect of the program does not need to be implemented immediately;

(b) the POTW had adequate legal authority and procedures to carry out those aspects of the program which will not be implemented immediately; and

(c) funding and personnel for the program aspects to be implemented at a later date will be available when needed. The POTW shall describe in the submission the mechanism by which this funding will be acquired. Upon receipt of a request for conditional approval, the department will establish a fixed date for the acquisition of the needed funding and personnel. If funding is not acquired by this date the conditional approval of the POTW pretreatment program and any removal allowances granted to the POTW may be modified or withdrawn.

(4) The request for authority to revise categorical pretreatment standards must contain the information required in 40 CFR 403.7 (adopted by reference in ARM 17.30.1410).

(5) A POTW requesting POTW pretreatment program approval shall submit to the department 3 copies of the submission described in (2) and, if appropriate, (4), of this rule. Within 60 days after receiving the submission, the department shall make a determination of whether the submission meets the requirements of (2) and, if appropriate, (4) of this rule. Upon a preliminary determination that the submission meets the requirements of this rule, the department will:

(a) notify the POTW that the submission has been received and is under review; and

(b) commence the public notice and evaluation activities set forth in ARM 17.30.1413.

(6) If, after review of the submission as provided for in (5) of this rule, the department determines that the submission does not comply with the requirements of (2), (3), and, if appropriate, (4) of this rule, the department will provide notice in writing to the applying POTW and each person who has requested individual notice. This notification must identify any defects in the submission and advise of the means by which the POTW can comply with the applicable requirements of (2), (3), and, if appropriate, (4) of this rule.

(7)(a) In order to be approved, the POTW pretreatment program must be consistent with any approved water quality management plan developed in accordance with 40 CFR Parts 130 and 131, when the CWA section 208 plan includes management agency designations and addresses pretreatment in a manner consistent with this subchapter. In order to assure such consistency, the department will solicit the review and comment of the appropriate CWA section 208 planning agency during the public comment period provided for in ARM 17.30.1413(2)(a)(ii) prior to approval or disapproval of the program.

(b) Where no 208 plan has been approved or when a plan has been approved but lacks management agency designations and/or does not address pretreatment in a manner consistent with this subchapter, the department will solicit the review and comment of the appropriate 208 planning agency. (History: 75-5-201, 75-5-304, MCA; IMP, 75-5-304, MCA; NEW, 1989 MAR p. 2063, Eff. 12/8/89; AMD, 1992 MAR p. 1241, Eff. 6/12/92; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.1413 APPROVAL PROCEDURES FOR POTW PRETREATMENT PROGRAMS AND POTW GRANTING OF REMOVAL CREDITS The following procedure is adopted in approving or denying requests for approval of POTW pretreatment programs and applications for removal credit authorization.

(1) The department has 90 days from the date of public notice of a submission complying with the requirements of ARM 17.30.1412(2), and where removal credit authorization is sought with the requirements of ARM 17.30.1410 and 17.30.1412(4), to review the submission. The department shall review the submission to determine compliance with the requirements of ARM 17.30.1411(2) and (6), and where removal credit is sought, with ARM 17.30.1410. The department may have up to an additional 90 days to complete the evaluation of the submission if the public comment period provided for in (2) of this rule is extended beyond 30 days or if a public hearing is held as provided for in (2)(b) of this rule. In no event, however, may the time for evaluation of the submission exceed a total of 180 days from the date of public notice of a submission.

(2) Upon receipt of a submission, the department will commence its review. Within 20 days after making a determination that a submission meets the requirements of ARM 17.30.1412(2), and when a removal credit authorization is sought with ARM 17.30.1410(4), the department will:

(a) Issue a public notice of request for approval of the submission:

(i) This public notice is circulated in a manner designed to inform interested and potentially interested persons of the submission. Procedures for the circulation of public notice include mailing notices of the request for approval of the submission to designated CWA section 208 planning agencies, federal and state fish, shellfish, and wildlife resource agencies; and to any other person or group who has requested individual notice, including those on appropriate mailing lists; and publication of a notice of request for approval of the submission in the largest daily newspaper within the jurisdiction served by the POTW.

(ii) The public notice provides a period of not less than 30 days following the date of the public notice during which time interested persons may submit their written views on the submission.

(iii) All written comments submitted during the 30-day comment period are retained by the department and are considered in the decision on whether or not to approve the submission. The period for comment may be extended at the discretion of the department.

(b) Provide an opportunity for the applicant, any affected state, or any interested state or federal agency, person, or group of persons to request a public hearing with respect to the submission:

(i) This request for public hearing must be filed within the 30-day or extended comment period described in (a)(ii) above, and must indicate the interest of the person filing such a request and the reasons why a hearing is warranted.

(ii) The department will hold a hearing if the POTW so requests. In addition, a hearing will be held if there is a significant public interest in issues relating to whether or not the submission should be approved. Instances of doubt are resolved in favor of holding the hearing.

(iii) Public notice of a hearing to consider a submission and sufficient to inform interested parties of the nature of the hearing and right to participate is published in the same newspaper as the notice of the original request. In addition, notice of the hearing is sent to those persons requesting individual notice.

(3) At the end of the 30-day or extended comment period and within the 90-day or extended period provided for in (1) of this rule, the department will approve or deny the submission based upon the evaluation in (1) of this rule and taking into consideration comments submitted during the comment period and the record of the public hearing, the department will so notify the POTW and each person who has requested individual notice. This notification includes suggested modification, and the department may allow the requestor additional time to bring the submission into compliance with applicable requirements.

(4) No POTW pretreatment program or authorization to grant removal allowances may be approved by the department if following the 30-day or extended evaluation period provided for in (2)(a)(ii) of this rule and any public hearing held pursuant to this rule, the regional administrator sets forth in writing objections to the approval of such submission and the reasons for such objections. A copy of the regional administrator's objections is provided to the applicant and to each person who has requested individual notice. The regional administrator shall provide an opportunity for written comments and may convene a public hearing on his or her objections. Unless

retracted, the regional administrator's objections constitute a final ruling to deny approval of a POTW pretreatment program or authorization to grant removal allowances 90 days after the date the objections are issued.

(5) The department will notify those persons who submitted comments and participated in the public hearing, if held, of the approval or disapproval of the submission. In addition, the department will cause to be published a notice of approval or disapproval in the same newspapers as the original notice of request was published. The department will identify any authorization to modify categorical pretreatment standards which the POTW may make for removal of pollutants subject to the pretreatment standards.

(6) The department will ensure that the submission and any comments on the submission are available to the public for inspection and copying. (History: 75-5-201, 75-5-304, MCA; IMP, 75-5-304, MCA; NEW, 1989 MAR p. 2063, Eff. 12/8/89; AMD, 1992 MAR p. 1241, Eff. 6/12/92; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.1414 REPORTING REQUIREMENTS FOR POTW'S AND INDUSTRIAL USERS (1) "Control authority" as it is used in this rule means the POTW, if the POTW's submission for its pretreatment program has been approved, or the department if the submission has not been approved.

(2) Within 180 days after the effective date of a categorical pretreatment standard or 180 days after the final administrative decision made upon a category determination submission under ARM 17.30.1407, whichever is later, existing industrial users subject to such categorical pretreatment standards and currently discharging to or scheduled to discharge to a POTW must submit to the control authority a report which contains the information listed in (a)-(g) below. Where reports containing this information have already been submitted to the department, the industrial user is not required to submit this information again. At least 90 days prior to commencement of the discharge, new sources and sources that become industrial users subsequent to the promulgation of an applicable categorical standard must submit to the control authority a report which contains the information listed in (a)-(g) below. New sources must also include in this report information on the method of pretreatment the source intends to use to meet applicable pretreatment standards. New sources must give estimates of the information requested in (d) and (e) below. The user shall:

(a) submit the name and address of the facility, including the name of the operator and owners;

(b) submit a list of any environmental control permits held by or for the facility;

(c) submit a brief description of the nature, average rate of production, and standard industrial classification of the operation carried out by the industrial user. This description should include a schematic processes diagram which indicates points of discharge to the POTW from the regulated process;

(d) submit information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from each of the following: regulated process streams and other streams as necessary to allow use of the combined wastestream formula of 40 CFR 403.6(e). The control authority may allow for verifiable estimates of these flows where justified by cost or feasibility considerations;

(e)(i) identify the pretreatment standards applicable to each regulated process;

(ii) submit the results of sampling and analysis identifying the nature and concentration, or mass, of regulated pollutants in the discharge from each regulated process when required by the control authority. Both daily maximum and average concentration or mass, where required, must be reported. The sample must be representative of daily operations;

(iii) a minimum of 4 grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organics. For all other pollutants, 24-hour composite samples must be obtained through flow-proportional composite sampling techniques where feasible. The control authority may waive flow-proportional composite sampling for any industrial user that demonstrates that flow-proportional sampling is infeasible. In such cases, samples may be obtained through time-proportional composite sampling techniques or through a minimum of 4 grab samples where the user demonstrates that this will provide a representative sample of the effluent being discharged;

(iv) take a minimum of 1 representative sample to compile that data necessary to comply with the requirements of this section;

(v) take samples immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment, the user should measure the flows and concentrations necessary to allow use of the combined wastestream formula of 40 CFR 403.6(e) in order to evaluate compliance with the pretreatment standards. When an alternate concentration or mass limit has been calculated in accordance with the combined wastestream formula of 40 CFR 403.6(e), this adjusted limit along with supporting data must be submitted to the control authority;

(vi) perform sampling and analysis in accordance with the techniques prescribed in 40 CFR 136 and amendments thereto. When 40 CFR 136 does not contain sampling or analytical techniques for the pollutant in question, or when the EPA determines that the 40 CFR sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis must be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the department;

(vii) submit a baseline report that indicates the time, date, and place of sampling, and methods of analysis, and that certifies such sampling and analysis is representative of normal work cycles and expected pollutant discharges to the POTW;

(viii) if the department allows it, the baseline report may utilize only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures.

(f) submit a statement, reviewed by an authorized representative of the industrial user and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis and, if not, whether additional operation and maintenance and/or additional pretreatment is required for the industrial user to meet the pretreatment standards and requirements; and

(g) if additional pretreatment and/or operation and maintenance are required to meet the pretreatment standards, submit the shortest schedule by which the industrial user will provide such additional pretreatment and/or operation and maintenance. The completion date in this schedule must not be later than the compliance date established for the applicable pretreatment standard.

(i) When the industrial user's categorical pretreatment standard has been modified by a removal allowance under ARM 17.30.1410 or the combined wastestream formula at the time the user submits the report required by this section (2), the information required by (f) and (g) above must pertain to the modified limits.

(ii) If the categorical pretreatment standard is modified by a removal allowance under ARM 17.30.1410, by use of a combined wastestream formula, or by a fundamentally different factor or variance, after the user submits the report required by this section (2), any necessary amendments to the information requested by (f) and (g) above must be submitted by the user to the control authority within 60 days after the modified limit is approved.

(3) The following conditions apply to the schedule required by (2)(g) of this rule:

(a) the schedule must contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the industrial user to meet the applicable categorical pretreatment standards;

(b) no increment referred to in (a) above may exceed 9 months;

(c) not later than 14 days following each date in the schedule and the final date for compliance, the industrial user shall submit a progress report to the control authority including, at a minimum, whether or not it complied with the increment of progress to be met on that date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the industrial user to return the construction to the schedule established. In no event may more than 9 months elapse between such progress reports to the control authority.

(4) Within 90 days following the date for final compliance with applicable categorical pretreatment standards or in the case of a new source following commencement of the introduction of wastewater into the POTW, any industrial user subject to pretreatment standards and requirements shall submit to the control authority a report containing the information described in (2)(a)-(f) of this rule. For industrial users subject to equivalent mass or concentration limits established by the control authority in accordance with the procedures in 40 CFR 403.6(c), this report shall contain a reasonable measure of the user's long term production rate. For all other industrial users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period.

(5)(a) Any industrial user subject to a categorical pretreatment standard after the compliance date of such pretreatment standard, or, in the case of a new source, after commencement of the discharge into the POTW, shall submit to the control authority during the months of June and December, unless required more frequently in the pretreatment standard or by the control authority, a report indicating the nature and concentration of pollutants in the effluent which are limited by such categorical pretreatment standards. In addition, this report must include a record of measured or estimated average and maximum daily flows for the reporting period for the discharge reported in (2)(d) of this rule except that the control authority may require more detailed reporting of flows. At the discretion of the control authority and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the control authority may agree to alter the months during which the above reports are to be submitted.

(b) When the control authority has imposed mass limitations on industrial users as provided by ARM 17.30.1407, the report required by (a) above must indicate the mass of pollutants regulated by pretreatment standards in the discharge from the industrial user.

(c) For industrial users subject to equivalent mass or concentration limits established by the control authority in accordance with the procedures in 40 CFR 403.6(c), the report required by (a) above shall contain a reasonable measure of the user's long term production rate. For all other industrial users subject to categorical pretreatment standards expressed only in terms of allowable pollutant discharge per unit of production (or other measure of operation), the report required by (a) above shall include the user's actual average production rate for the reporting period.

(6) The industrial user shall notify the POTW immediately of all discharges that could cause problems to the POTW, including any slug loading, as defined by ARM 17.30.1406, by the industrial user.

(7) The reports required in (2)(e), (4) and (5) of this rule must contain the results of sampling and analysis of the discharge, including the flow, the nature and concentration, or production and mass where requested by the control authority, of pollutants contained therein which are limited by the applicable pretreatment standards.

(a) This sampling and analysis may be performed by the control authority in lieu of the industrial user. Where the POTW performs the required sampling and analysis in lieu of the industrial user, the user will not be required to submit the compliance certification required under ARM 17.30.1414(2)(f) and 40 CFR 403.12(d). In addition, where the POTW itself collects all the information required for the report, including flow data, the industrial user will not be required to submit the report.

(b) If sampling performed by an industrial user indicates a violation, the user shall notify the control authority within 24 hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the control authority within 30 days after becoming aware of the violation, except the industrial user is not required to resample if:

(i) the control authority performs sampling at the industrial user at a frequency of at least once per month, or

(ii) the control authority performs sampling at the user between the time when the user performs its initial sampling and the time when the user receives the results of this sampling.

(8) The reports required in (5) of this rule shall be based upon data obtained through appropriate sampling and analysis performed during the period covered by the report, which data is representative of conditions occurring during the reporting period. The control authority shall require that frequency of monitoring necessary to assess and assure compliance by industrial users with applicable pretreatment standards and requirements.

(9) All analysis shall be performed in accordance with procedures established by the administrator pursuant to section 304(h) of the Clean Water Act and contained in 40 CFR Part 136 and amendments thereto or with any other test procedures approved by the administrator. (See 40 CFR 136.4 and 136.5.) Sampling shall be performed in accordance with the techniques approved by the administrator. Where 40 CFR Part 136 does not include sampling or analytical techniques for the pollutants in question, or where the administrator determines that the Part 136 sampling and analytical techniques are inappropriate for the

pollutant in question, sampling and analyses shall be performed using validated analytical methods or any other sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the administrator.

(10) If an industrial user subject to the reporting requirement in (5) of this rule monitors any pollutant more frequently than required by the control authority, using the procedures prescribed in (9) of this rule, the results of this monitoring shall be included in the report.

(11) The control authority shall require appropriate reporting from those industrial users with discharges that are not subject to categorical pretreatment standards. Significant noncategorical industrial users shall submit to the control authority at least once every 6 months (on dates specified by the control authority) a description of the nature, concentration, and flow of the pollutants required to be reported by the control authority. These reports must be based on sampling and analysis performed in the period covered by the report, and performed in accordance with the techniques described in 40 CFR part 136, (July 1, 1991). Where 40 CFR part 136 does not contain sampling or analytical techniques for the pollutant in question, or where the EPA determines that the part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis must be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other persons, approved by the EPA. This sampling and analysis may be performed by the control authority in lieu of the significant noncategorical industrial user. Where the POTW itself collects all the information required for the report, the noncategorical significant industrial user will not be required to submit the report.

(12) POTWs with approved pretreatment programs shall provide the department with a report that briefly describes the POTW's program activities, including activities of all participating agencies, if more than one jurisdiction is involved in the local program. The report required by this section shall be submitted no later than 1 year after approval of the POTW's pretreatment program, and at least annually thereafter, and shall include, at a minimum, the following:

(a) an updated list of the POTW's industrial users, including their names and addresses, or a list of deletions and additions keyed to a previously submitted list. The POTW shall provide a brief explanation of each deletion. This list shall identify which industrial users are subject to categorical pretreatment standards and specify which standards are applicable to each industrial user. The list shall indicate which industrial users are subject to local standards that are more stringent than the categorical pretreatment standards. The

POTW shall also list the industrial users that are subject only to local requirements;

(b) a summary of the status of industrial user compliance over the reporting period;

(c) a summary of compliance and enforcement activities (including inspections) conducted by the POTW during the reporting period; and

(d) any other relevant information requested by the approval authority.

(13) All industrial users shall promptly notify the POTW in advance of any substantial change in the volume or character of pollutants in their discharge, including the listed or characteristic hazardous wastes for which the industrial user has submitted initial notification under 40 CFR 403.12(p).

(14) The following conditions and reporting requirements apply to the compliance schedule for development of an approvable POTW pretreatment program required by ARM 17.30.1411:

(a) the schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the development and implementation of a POTW pretreatment program (e.g., acquiring required authorities, developing funding mechanisms, acquiring equipment);

(b) no increment referred to in (a) above shall exceed 9 months;

(c) not later than 14 days following each date in the schedule and the final date for compliance, the POTW shall submit a progress report to the approval authority including, as a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps taken by the POTW to return to the schedule established. In no event shall more than 9 months elapse between such progress reports to the approval authority.

(15) The reports required by (2), (4), and (5) of this rule shall include the certification statement as set forth in 40 CFR 403.6(a)(2)(ii), and shall be signed as follows:

(a) By a responsible corporate officer, if the industrial user submitting the reports required by (2), (4), and (5) of this rule is a corporation. For the purpose of this section, a responsible corporate officer means:

(i) a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation; or

(ii) the manager of 1 or more manufacturing, production, or operation facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(b) By a general partner or proprietor if the industrial user submitting the reports required by (2), (4), and (5) of this rule is a partnership or sole proprietorship respectively.

(c) By a duly authorized representative of the individual designated in (1)(a) or (b) of this rule if:

(i) the authorization is made in writing by the individual described in (1)(a) or (b) of this rule;

(ii) the authorization specifies either an individual or a position having responsibility for the overall operation of the facility from which the industrial discharge originates, such as the position of plant manager, operator of a well, or well field superintendent, or a position of equivalent responsibility, or having overall responsibility for environmental matters for the company; and

(iii) the written authorization is submitted to the control authority.

(d) If an authorization under (c) above is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of (c) above must be submitted to the control authority prior to or together with any reports to be signed by an authorized representative.

(16) Reports submitted to the department by the POTW in accordance with (13) of this rule must be signed by a principal executive officer, ranking elected official, or other duly authorized employee if the employee is responsible for overall operation of the POTW.

(17) The reports and other documents required to be submitted or maintained under this section are subject to state law relating to fraud and false statements.

(18) The reports required by (2), (4), (5), (8), (9), and (10) of this rule are subject to the Montana Water Quality Act as amended and all other state and federal laws pertaining to fraud and false statements.

(19)(a) Any industrial user and POTW subject to the reporting requirements established in this rule shall maintain records of all information resulting from any monitoring activities required by this subchapter. Such records must include for all samples:

- (i) the date, exact place, method, and time of sampling, and the names of the person or persons taking the samples;
- (ii) the dates analyses were performed;
- (iii) who performed the analyses;
- (iv) the analytical techniques or methods use; and
- (v) the results of the analyses.

(b) Any industrial user or POTW subject to these reporting requirements established shall retain for a minimum of 3 years any records of monitoring activities and results, whether or not such monitoring activities are required by this subchapter, and shall make such records available for inspection and copying by the department, the United States environmental protection agency, and the POTW in the case of an industrial user. This period of retention is extended during the course of any unresolved litigation regarding the industrial user or POTW or when requested by the department.

(c) A POTW to which reports are submitted by an industrial user pursuant to (2), (4), and (5) of this rule shall retain such reports for a minimum of 3 years and shall make such reports available for inspection and copying by the department or the United States environmental protection agency. This period of retention is extended during the course of any unresolved litigation regarding the discharge of pollutants by the industrial user or the operation of the POTW pretreatment program or when requested by the department.

(20)(a) The industrial user shall notify the POTW, the department, and the EPA regional waste management division director, in writing, of any discharge into the POTW of a substance, which, if otherwise disposed of, would be a hazardous waste under ARM Title 17, chapter 54, subchapter 3. The notification must include the name of the hazardous waste as set forth in 40 CFR part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the industrial user discharges more than 100 kilograms of the hazardous waste per calendar month to the POTW, the notification must also contain the following information to the extent the information is known and readily available to the industrial user: An identification of the hazardous constituents contained in the wastes, an estimate of the mass and concentration of the constituents in the wastestream discharged during that calendar month, and an estimate of the mass of constituents in the wastestream expected to be discharged during the following 12 months. All notifications must take place within 180 days of the effective date of this rule. Industrial users who commence discharging after the effective date of this rule shall provide the notification no later than 180 days after the discharge of the listed or characteristic hazardous waste. Any notification under this paragraph must be submitted only once for each hazardous waste discharged. However, notifications of changed

discharges must be submitted under (13) of this rule. The notification requirement in this section does not apply to pollutants already reported under the self-monitoring requirements of (2), (4), and (5) of this rule.

(b) Dischargers are exempt from the requirements of (a) above during a calendar month in which they discharge no more than 15 kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and ARM 17.54.333(1)(e). Discharge of more than 15 kilograms of non-acute hazardous wastes in a calendar month, or of any quantity of hazardous wastes as specified in 40 CFR 261.30(d) and ARM 17.54.333(1)(e), requires a 1-time notification. Subsequent months during which the industrial user discharges more than such quantities of any hazardous waste do not require additional notification.

(c) If any new regulations promulgated under section 3001 of the federal Resource Conservation and Recovery Act (RCRA) identify additional characteristics of hazardous waste or list any additional substance as a hazardous waste, the industrial user must notify the POTW and the department of the discharge of such substance within 90 days of the effective date of such regulations.

(d) If any notification is made under this section (20), the industrial user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

(21) The board hereby adopts and incorporates by reference 40 CFR part 136 (guidelines establishing test procedures for the analysis of pollutants) (July 1, 1991), and 40 CFR part 261 (identification and listing of hazardous waste) (July 1, 1991). Copies of these materials may be obtained from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901. (History: 75-5-201, 75-5-304, MCA; IMP, 75-5-304, MCA; NEW, 1989 MAR p. 2063, Eff. 12/8/89; AMD, 1992 MAR p. 1241, Eff. 6/12/92; TRANS, from DHES, 1996 MAR p. 1499.)

Rules 17.30.1415 through 17.30.1418 reserved

17.30.1419 CONFIDENTIALITY OF INFORMATION (1) In accordance with 75-5-105, MCA, any information concerning sources of pollution that is furnished to the board or department or which is obtained by either of them is a matter of public record and open to public use, provided that trade secrets may be maintained or be confidential if so determined by a court of competent jurisdiction.

(2) Claims of confidentiality for the following information must be denied:

(a) the name and address of any permit applicant or permittee; and

(b) permit applications, permits, and effluent data.

(3) Subject to (1) of this rule, information required by MPDES application forms provided by the department under ARM 17.30.1322 may not be claimed confidential, including information submitted on the forms themselves and any attachments used to supply information required by the forms. (History: 75-5-201, 75-5-105, MCA; IMP, 75-5-401, MCA; NEW, 1989 MAR p. 2063, Eff. 12/8/89; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.1420 NET/GROSS CALCULATION (1) Categorical pretreatment standards may be adjusted to reflect the presence of pollutants in an industrial user's intake water in accordance with 40 CFR 403.15 (July 1, 1991). The department hereby incorporates herein 40 CFR 403.15, which is a federal regulation relating to net/gross calculation. A copy of 40 CFR 403.15 may be obtained from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901. (History: 75-5-201, 75-5-304, MCA; IMP, 75-5-304, MCA; NEW, 1989 MAR p. 2063, Eff. 12/8/89; AMD, 1992 MAR p. 1241, Eff. 6/12/92; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.1421 UPSET PROVISION (1) "Upset" as used in this rule means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the industrial user. An upset does not include non-compliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(2) An upset constitutes an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of (3) of this rule are met.

(3) An industrial user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence, that:

(a) an upset occurred and the industrial user can identify the cause of the upset;

(b) the facility was at the time being operated in a prudent and workmanlike manner and in compliance with applicable operation and maintenance procedures;

(c) the industrial user has submitted the following information to the POTW and control authority within 24 hours of becoming aware of the upset, or if this information is provided orally, a written submission within 5 days:

(i) a description of the indirect discharge and cause of noncompliance;

(ii) the period of noncompliance, including exact dates and times, or if not corrected, the anticipated time the noncompliance is expected to continue;

(iii) steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance;

(iv) in any enforcement proceeding the industrial user seeking to establish the occurrence of an upset has the burden of proof;

(v) in the usual exercise of prosecutorial discretion, state enforcement personnel will review any claims that noncompliance was caused by an upset. No determinations made in the course of the review constitute final agency action subject to judicial review. Industrial users have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards;

(vi) the industrial user shall control production or discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails. (History: 75-5-304, MCA; IMP, 75-5-304, MCA; NEW, 1989 MAR p. 2063, Eff. 12/8/89; TRANS, from DHES, 1996 MAR p. 1499.)

Rule 17.30.1422 through 17.30.1424 reserved

17.30.1425 BYPASS (1)(a) "Bypass" means the intentional diversion of wastestreams from any portion of an industrial user's treatment facility.

(b) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(2) An industrial user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of (3) and (4) of this rule.

(3)(a) If an industrial user knows in advance of the need for a bypass, it shall submit prior notice to the control authority, if possible at least 10 days before the date of the bypass.

(b) An industrial user shall submit oral notice of an unanticipated bypass that exceeds applicable pretreatment standards to the control authority within 24 hours from the time the industrial user becomes aware of the bypass. A written submission shall also be provided within 5 days of the time the industrial user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The control authority may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

(4) Bypass is prohibited, and the control authority may take enforcement action against an industrial user for a bypass, unless:

(a) bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(b) there were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and

(c) the industrial user submitted notices as required under (3) of this rule.

(5) The control authority may approve an anticipated bypass, after considering its adverse effects, if the control

authority determines that it will meet the 3 conditions listed in (4)(a) of this rule. (History: 75-5-201, 75-5-304, MCA; IMP, 75-5-304, MCA; NEW, 1989 MAR p. 2063, Eff. 12/8/89; AMD, 1992 MAR p. 1241, Eff. 6/12/92; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.1426 MODIFICATION OF POTW PRETREATMENT PROGRAMS

(1) Either the department or a POTW with an approved POTW pretreatment program may initiate program modification at any time to reflect changing conditions at the POTW. Program modification is necessary whenever there is a significant change in the operation of a POTW pretreatment program that differs from the information in the POTW's submission, as approved under ARM 17.30.1413.

(2) POTW pretreatment program modifications must be accomplished as follows:

(a) For substantial modifications, as defined in (3) of this rule:

(i) The POTW shall submit to the department a statement of the basis for the desired modification, a modified program description (see ARM 17.30.1412(2)), or such other documents the department determines to be necessary under the circumstances.

(ii) The department shall approve or disapprove the modification based on the requirements of ARM 17.30.1411(6) following the procedures in ARM 17.30.1413(2)-(6).

(iii) The modification shall be incorporated into the POTW's NPDES permit after approval. The permit will be modified to incorporate the approved modification in accordance with ARM 17.30.1362.

(iv) The modification shall become effective upon approval by the department. Notice of approval shall be published in the same newspaper as the notice of the original request for approval of the modification under ARM 17.30.1413(2)(a)(i).

(b) The POTW shall notify the department of any other (i.e., non-substantial) modifications to its pretreatment program at least 30 days prior to when they are to be implemented by the POTW, in a statement similar to that provided for in (a)(i) above. Such non-substantial program modifications shall be deemed to be approved by the approval authority, unless the department determines that a modification submitted is in fact a substantial modification, 90 days after the submission of the POTW's statement. Following such "approval" by the department, such modifications shall be incorporated into the POTW's permit in accordance with ARM 17.30.1362. If the department determines that a modification reported by a POTW in its statement is in fact a substantial modification, the department shall notify the POTW and initiate the procedures in (a) above.

(3) Substantial modifications.

(a) The following are substantial modifications for purposes of this rule:

- (i) changes to the POTW's legal authorities;
- (ii) changes to local limits, which result in less stringent local limits;
- (iii) changes to the POTW's control mechanism, as described in ARM 17.30.1411(6)(a)(iii);
- (iv) changes to the POTW's method for implementing categorical pretreatment standards (e.g., incorporation by reference, separate promulgation, etc.);
- (v) a decrease in the frequency of self-monitoring or reporting required of industrial users;
- (vi) a decrease in the frequency of industrial user inspections or sampling by the POTW;
- (vii) changes to the POTW's confidentiality procedures;
- (viii) significant reductions in the POTW's pretreatment program resources (including personnel commitments, equipment, and funding levels); and
- (ix) changes in the POTW's sludge disposal and management practices.

(b) The department may designate other specific modifications, in addition to those listed in (a) above, as substantial modifications.

(c) A modification that is not included in (a) above is nonetheless a substantial modification for purposes of this rule if the modification:

- (i) would have a significant impact on the operation of the POTW's pretreatment program;
- (ii) would result in an increase in pollutant loadings at the POTW; or
- (iii) would result in less stringent requirements being imposed on industrial users of the POTW. (History: 75-5-201, 75-5-304, MCA; IMP, 75-5-304, MCA; NEW, 1989 MAR p. 2063, Eff. 12/8/89; AMD, 1992 MAR p. 1241, Eff. 6/12/92; TRANS, from DHES, 1996 MAR p. 1499.)